

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

In re:)	
)	
STEPHEN BRADLEY HALFERTY,)	Case No. 22-00101-05-DMW
)	Chapter 13
Debtor.)	
<hr/>)	
)	
EVER-SEAL, INC.,)	
)	
Plaintiff,)	Adv. Proc. No. 22-00050-5-DMW
v.)	
)	
STEPHEN BRADLEY HALFERTY)	JURY DEMAND
d/b/a DURASEAL,)	
)	
Defendant.)	
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PLAINTIFF'S MOTION TO WITHDRAW REFERENCE

NOW COMES Plaintiff Ever-Seal, Inc. (“Ever-Seal”), by and through counsel, pursuant to 28 U.S.C. § 157(d), Federal Rule of Bankruptcy Procedure 5011, and Federal Rule of Civil Procedure 38(b), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 9015, and hereby moves for the entry of an Order from United States District Court for the Eastern District of North Carolina (the “District Court”) withdrawing the reference of the above-captioned Adversary Proceeding from the Bankruptcy Court to the District Court. In support of the Motion, Ever-Seal provides as follows:

1. On January 14, 2022, Defendant Stephen Bradley Halferty (“Defendant”) filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code. Defendant did not serve Ever-Seal with notice of Defendant’s bankruptcy case at that time.

2. On February 8, 2022, Ever-Seal commenced an action (the “Tennessee Action”) against Defendant in the United States District Court for the Middle District of Tennessee, Case No. 3:22-cv-00082, seeking to enforce the terms of a Confidentiality Agreement between Ever-Seal and Defendant containing both a two-year non-competition clause and a confidentiality clause. Ever-Seal asserted claims of breach of contract, breach of fiduciary duty, and intentional interference with business relations, and sought immediate and permanent injunctive relief, as well as damages. Ever-Seal simultaneously filed a motion for a temporary restraining order (“TRO”) and preliminary injunction on its breach of contract and intentional interference claims. On February 11, 2022, the Middle District of Tennessee entered a TRO against Defendant and set a preliminary injunction hearing for February 24, 2022.

3. Ever-Seal was first notified of Defendant’s bankruptcy in the late afternoon on Friday, February 11, 2022, after the Middle District of Tennessee had issued the TRO, when Debtor’s bankruptcy counsel contacted Ever-Seal’s counsel. Ever-Seal promptly notified the Middle District of Tennessee of the bankruptcy case on Monday, February 14, 2022 by filing a suggestion of bankruptcy, and on February 15, 2022, that Court stayed the Tennessee Action pending further order of the Court.

4. On March 17, 2022, Ever-Seal commenced this adversary proceeding against Defendant, Case No. 22-00050-5-DMW, asserting post-petition claims against Defendant for breach of the Confidentiality Agreement and intentional interference with business relations (the “Contract Action”) [Doc. 1]. In its Complaint, Ever-Seal demanded a jury trial on all claims.

5. On May 2, 2022, Defendant filed his Answer and Counterclaim against Ever-Seal [Doc. 21]. Defendant’s counterclaim is a state-law contract claim. On May 23, 2022, Ever-Seal

filed an Answer to Defendant's counterclaim, again demanding a jury trial on all claims, including Defendant's counterclaim [Doc. 23].

6. All of the claims asserted in the Contract Action are non-core and solely involve state law causes of action arising under the laws of Tennessee. No claims relate to a pre-petition claim or any proof of claim in the underlying bankruptcy proceeding.

7. Congress granted original jurisdiction to the district courts over "all civil proceedings arising under title 11, or arising in or related to cases under title 11," 28 U.S.C. § 1334(b), and authorized automatic referral of proceedings covered by § 1334(b) to the bankruptcy courts. *See* § 157(a). This District has provided for such referral.

8. However, pursuant to § 157(d) "[t]he district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." § 157(d).

9. As shown more specifically in the brief accompanying this Motion, which is incorporated as is fully set forth herein, withdrawal of the reference of this adversary proceeding pursuant to 28 U.S.C. § 157(d) is warranted because: (1) the Bankruptcy Court does not have constitutional authority to adjudicate the non-core claims in the Contract Action; (2) Ever-Seal does not consent to the Bankruptcy Court entering final orders with respect to the non-core state law causes of action in this case, see 28 U.S.C. § 157(c)(1); (3) Ever-Seal demands a jury trial on both its claims and Defendant's state law counterclaim, and the parties do not consent to a jury trial before the Bankruptcy Court, see 28 U.S.C. § 157(e); and (4) judicial efficiency is best served by having the District Court hear and determine all matters in the Contract Action.

WHEREFORE, Ever-Seal respectfully prays that the District Court enter an Order, substantially in the form attached hereto, pursuant to 28 U.S.C. § 157(d) and Rule 5011(a) of the Federal Rules of Bankruptcy Procedure, immediately withdrawing reference of the above-captioned adversary proceeding and for such other and further relief as the District Court may deem just and proper.

Respectfully submitted this the 20th day of July, 2022.

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Attorneys for Plaintiff

2. The Contract Action is hereby withdrawn pursuant to 28 U.S.C. § 157(d);

3. The Bankruptcy Court is hereby stayed from further consideration of the Contract Action;

4. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order, and to interpret, implement and enforce the provisions of this Order.

Dated:

United States District Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **PLAINTIFF'S MOTION TO WITHDRAW REFERENCE** was duly served upon the following by electronic means or by depositing same enclosed in a post-paid, properly addressed envelop in a Post Office or official depository under the exclusive care and custody of the United States Postal Service:

Travis Sasser
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Counsel for Defendant

This the 20th day of July, 2022.

/s/ Brian R. Anderson

Brian R. Anderson